

Committee on Resources

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**STATEMENT OF
ROBERT S. LYNCH
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APPOINTED MEMBER OF THE WATER RIGHTS TASK FORCE
BEFORE THE HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON WATER AND POWER
CONCERNING H.R. 135 TO ESTABLISH THE
TWENTY-FIRST CENTURY WATER COMMISSION**

April 1, 2003

Mr. Chairman and Members of the Subcommittee, my name is Bob Lynch. I am an attorney in Phoenix, Arizona. I have worked on water and water rights issues, beginning at the Justice Department here in Washington in the late 1960's and then in private practice in Phoenix for over 35 of the 38+ years I have been a member of the bar.

In June 1996, then Speaker of the House Newt Gingrich appointed me to the Water Rights Task Force, a federal advisory committee that had been established by the Federal Agriculture Improvement and Reform Act, P.L. 104-127. This seven-member advisory committee was chaired by Colorado water attorney Bennett Raley, now Assistant Secretary of the Interior for Water and Science. The Task Force met and conducted public hearings at a dozen locations, including one here in the Russell Senate Office Building. We received written documentation and heard testimony from interest groups and private citizens. At the Washington hearing, a Member of Congress addressed us.

Our Task Force was directed to examine more narrow issues than those presented in H.R. 135. Nevertheless, the issues related to the role of federal agencies and conflicts that arose between agency desires and state water rights. Our report was submitted to Congress in August 1997.

You may remember that I appeared here last May to testify on Mr. Linder's prior bill, H.R. 3561. In my written and oral testimony, I questioned the structure of the entity that was to be tasked to acquire information about water supply issues in the twenty-first century. In sum, I recommended that an approach like the Water Rights Task Force be utilized, giving Congress a view from outside government as to the issues that lay before us in solving water supply problems.

While I could not support H.R. 3561 as introduced last year, I am pleased to be able to appear before you today to support H.R. 135 enthusiastically. I want to congratulate Mr. Linder both for his zeal in pursuing this subject and for his flexibility in listening to suggestions of others in crafting H.R. 135. Without putting too fine a point on it, I think this approach will work.

BARRIERS

This new commission will give the President and the Congress a fresh perspective on the complex subject of water supply and water rights. I am pleased that the bill calls for respect for state water rights and the primary role of the states that this country has historically recognized. Continued respect for the states is central to acceptance of any commission recommendations.

We all know that water flows downhill or toward money. However, beyond the mere application of principles of physics or finance, this commission needs to take a hard, independent look at the barriers our laws and institutions, both federal and state, present to problem-solving.

To be of real value, this commission must be blunt, perhaps even brutally frank, in its assessment of how we manage water supply in this country and the extraordinary variability woven into that task in different regions.

Some of the barriers this commission must establish are statutory. Some of the barriers are institutional. Some of the barriers are social. To overcome these barriers and be able to suggest paths to solutions, this commission will need to find strategies that can provide benefits to multiple interests.

Virtually every problem related to water supply that I have encountered, at least in the last quarter century, whether environmental, municipal, or agricultural, could have been solved singly or in combination by more water. Yet we often do not engage in strategies to increase supply, or protect against floods and conserve flood flows, because others may gain an advantage or because we cannot necessarily quantify or increase our advantage.

To the extent that this commission will be confronted by historic patterns of applied self-interest, it will need to suggest methods for reorienting some of our past water attitudes. Hopefully the commission will be charged with thinking outside the box. H.R. 135 lists an impressive array of duties for the commission. I am not sure how all these can be accomplished in the time allotted but it is certainly a worthwhile list.

CONCLUSION

Being a water lawyer, I tend to gravitate to articles in the newspaper about water. This last several years, most of them have been about drought. I have been impressed by the extent to which the drought has impacted so many different areas of the country. We in the West are used to having this problem and reading about our neighbor states and their drought problems. I, frankly, was not prepared for articles on the drought problems in Charlottesville where our daughter goes to school or Roanoke, where my wife's family lives. I have been aware of the problems in the Atlanta area for some time because of legislation that has been introduced and work that has been done in that area. But I didn't realize until the Governor of Maryland declared a drought emergency in seven counties near here how bad it had gotten in this area or in Pennsylvania, New Jersey and elsewhere.

What Mother Nature has taught us recently is that not being prepared is not an option. Just last week, I read an article in our paper about a study that suggests that the Mayan culture of Mexico was driven out of existence by drought, not just over five years like the current drought in Arizona or seven or ten or thirty like the Southwest drought of the late 1800's. This study talked about a drought lasting one hundred years.

We may already be behind the curve in looking at strategies for increasing our water supply. Whether we are or not, we are clearly at a point in our history where we must focus on this issue. H.R. 135 does just that. It is a good bill. It is a good idea. It is clearly an idea whose time has come.

Thank you Mr. Chairman and Members of the Subcommittee for the opportunity to testify on this extraordinarily important subject.

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